

R.D. 0013-04  
Plymouth Meeting, PA

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

**HRC MANOR HEALTH CARE, INC.  
D/B/A/ HEARTLAND HOME HEALTH  
CARE AND HOSPICE**

Employer<sup>1</sup>

and

**CASE 22-RC-12498  
(Formerly 4-RC-20860)**

**OPEIU HEALTH CARE LOCAL 112,  
AFL-CIO**

Petitioner<sup>2</sup>

**DECISION AND DIRECTION OF ELECTION**

**I. INTRODUCTION:**

Petitioner seeks to represent a unit of all full time and regular part time registered nurses employed by the Employer in its Hospice and Home Care Divisions, who work from its Plymouth Meeting, Pennsylvania facility, excluding confidential employees, managerial employees, guards and supervisors as defined in the Act and all other employees.<sup>3</sup> In all, Petitioner seeks to represent a unit of approximately 15 employees.

The Employer contends that the unit sought by the Petitioner is inappropriate in that it would contribute to an undue proliferation of bargaining units in a health

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<sup>1</sup> The name of the Employer appears as amended at hearing

<sup>2</sup> The name of the Petitioner appears as amended at hearing.

<sup>3</sup> Petitioner amended its petition at the hearing to exclude licensed practical nurses upon the Employer's report that it employed no employees in that classification.

care setting, excluding many individuals who share a community of interest with the petitioned-for employees. The Employer asserts that the only appropriate unit is a wall-to-wall unit of all full time and regular part time professional and non-professional employees, in addition to the registered nurses, but excluding all confidential employees, guards and supervisors as defined in the Act.<sup>4</sup> In all, the Employer's unit would consist of approximately 74 employees.

Based on the facts and analysis described below, I find that the petitioned for registered nurses unit is appropriate and direct an election in that unit.

Pursuant to the provisions of Section 3(b) of the Act, the Board had delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>5</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.<sup>6</sup>

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<sup>4</sup> The Employer would include External Intake Liaisons, Internal Intake Liaisons, Volunteer Coordinators, Spiritual Care Coordinators, Bereavement Coordinators, Customer Service Representatives, Social Workers, Team Coordinators, RN Case Managers, Occupational Therapists, Physical Therapists, Home Health Aides and Certified Nurses' Assistants.

<sup>5</sup> Briefs filed by the parties have been considered.

<sup>6</sup> The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described *infra*:

**All full time and regular part time registered nurses employed by the Employer at its Plymouth Meeting, Pennsylvania facility but excluding all confidential employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.**

## **II. BACKGROUND:**

The Employer provides home and hospice care services that involve a continuum of care for medically homebound patients, from initial diagnosis through their need for hospice services. Using a team-based holistic approach, the Employer provides skilled nursing, occupational, physical and speech therapy, as well as bereavement and spiritual care to individuals with chronic illness in nursing homes, assisted living and private residences located in Montgomery, Chester, Bucks, Delaware and Philadelphia Counties in the State of Pennsylvania.

## **III. EMPLOYER'S CONTENTIONS:**

The Employer's contentions raise two issues: the inclusion of non-professionals in a unit of professional employees and the appropriateness of a unit limited to registered nurses in a non-acute health care facility.

Section 9(b) (1) of the Act, which provides that professional employees may not be included in a bargaining unit with nonprofessionals unless they vote in favor of

such inclusion, governs the first issue. The operative effect of that provision is that as a matter of law, a mixed professional and non-professional unit cannot be found to be the sole appropriate unit for collective bargaining. *South Hills Health System*, 330 NLRB 653 n.1 (2000); *Leedom v. Kyne*, 358 U.S. 184 (1958). While the parties did not litigate the issue of professional status, the record reveals that the positions of volunteer coordinator, spiritual care coordinator, customer service representative, team coordinator, certified nurses assistant and home health aide require no advanced degree or license, nor do they require the consistent exercise of independent judgment sufficient to establish professional status pursuant to Section 2(12) of the Act. As the Petitioner here does not seek to represent these non-professional employees on any basis, I find that further consideration of the Employer's proposal for a mixed professional-non-professional unit is unwarranted.

Therefore, the remaining issue is the appropriateness of a unit of registered nurses.<sup>7</sup>

#### **IV. LEGAL FRAMEWORK**

The Board has established a "pragmatic or empirical community of interest" test to be applied to evaluating the appropriateness of collective bargaining units in non-acute health care facilities. *Park Manor Care Center, Inc.*, 305 NLRB 872, 874-6 (1991). "In this regard, the Board will consider traditional community of interest factors, and factors deemed relevant by the Board in its rulemaking proceedings in collective bargaining units in the health care industry, the evidence presented during

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<sup>7</sup> Neither party has proposed a unit of all professional employees nor does any party assert that registered nurses are supervisors within the meaning of the Act.

rulemaking with respect to units in acute care hospitals, and prior precedent.” Since *Park Manor*, the Board has twice applied this standard to approve units limited to registered nurses in non-acute health care facilities. *South Hills Health System*, above; *Marian Manor for the Aged*, 333 NLRB 1084 (2001).

## **V. FACTS**

The Employer here provides home and hospice care to patients at nursing homes, hospitals and private residences through its Home Health Care division and its Hospice Care division. Its Home Health Care division employs teams of registered nurses assigned as case managers, home health aides, speech, physical and occupational therapists, and social workers, who work in the field providing services at patient’s homes or residential facilities. All Home Health Care division employees work under the supervision of a Patient Care Coordinator, a managerial level registered nurse. Team coordinators provide office support.

The Hospice Care division employs teams of registered nurses, home health aides, certified nurse assistants, social workers, spiritual care coordinators and bereavement coordinators as field employees who provide services at patients’ homes or residential facilities under the direction of a Patient Care Coordinator. The Hospice Care division also employs a number of employees performing administrative and support functions at its Plymouth Meeting facility: external intake liaisons, internal intake liaisons, volunteer coordinators, community services representatives and team coordinators.

Registered nurses performing as case managers are the primary patient caregivers. They function independently to assess patient and family needs and set,

coordinate and implement plans of care. Registered nurse case managers may visit patients multiple times each week; other field employees may visit between once a week and once a month, depending on patients' needs. Registered nurses participate in biweekly interdisciplinary meetings with other field employees to exchange information and coordinate care.

All employees are trained in the Employer's Sincerus Care program, which is intended to provide team-based interdisciplinary care to its clients' physical, emotional and spiritual concerns, and its Circle of Care program, which instructs employees in principles of customer service. Staff may see each other when they check in at the beginning or end of a workday, at interdisciplinary meetings held biweekly, at monthly staff meetings and sporadically at patient's homes.

Field employees work under generally common working conditions. All work the same hours, although the registered nurse case managers are required to work on call. All employees receive the same benefits and are subject to the terms of the Employer's Employee Handbook. Social workers, intake liaisons, volunteer coordinators and customer service representatives are salaried. Registered nurses and the remaining employees are paid hourly.

Employees in the unit proposed by the Employer are subject to a wide variety of educational requirements. Registered nurses, speech, physical and occupational therapists must be licensed by the state; social workers and spiritual care coordinators are required to have college degrees, while bereavement coordinators and speech, physical and occupational therapists require advanced degrees. While registered nurses employed as field staff have transferred to positions as intake liaisons,

customer service representatives or patient care coordinators, the record revealed no evidence of any reciprocal transfer into the registered nurse case manager position from other classifications. While nursing or social work experience is required for the positions of internal and external intake liaisons, these employees perform largely administrative services at the Employer's Plymouth Meeting office and have little patient contact, other than evaluating clients for admission.

## **VI. Legal Analysis**

Based upon a review of the record, I find that the Employer has failed to present evidence in this matter sufficient to overcome the appropriateness of a unit of registered nurses. In the health care industry, as any other, unions are not required to organize in the most comprehensive unit available or even the most appropriate unit. They need only select an appropriate unit. *Fairbault Clinic*, 308 NLRB 131, 133 (1992); *Newington Children's Hospital*, 217 NLRB 793 (1975). The Board has historically recognized the unique interest of registered nurses that generally make their separation appropriate. Section 103.30, Rules and Regulations of the National Labor Relations Board, 29 CFR 102 et. seq.; *Fairbault Clinic*, above at 133.

In reaching this conclusion, I am guided by Board precedent, the information disclosed by the Board's rule-making proceedings and the community of interest factors revealed by this record. First, the higher education, training and licensing requirements distinguish the registered nurses in this case; they have primary responsibility for day-to-day patient care and there is little interchange and contact between the registered nurses and other classifications. Thus, the testimony revealed that employees who are registered nurses have moved between case manager and

administrative or managerial positions requiring nursing experience, but the requirements of state licensing boards and the employer's own job requirements preclude the transfer of employee without registered nurse certification into the case manager position.

That certain factors support the appropriateness of a broader unit does not warrant a contrary conclusion. Although the record disclosed some evidence of functional integration, common supervision, common general working conditions, common work sites and sporadic contact among employees resulting from the Employer's team-based interdisciplinary system, the Board has found that such circumstances do not compel a conclusion that registered nurses must be combined with other professional employees. *South Hills Health System*, above at 657. All employees are trained in the Employer's Sincerus Care and Circle of Care programs. Staff may see each other when they check in at the beginning or end of the workday, at interdisciplinary meetings held biweekly, at monthly staff meetings and sporadically at patient's homes. As noted above, the Board has rejected employers' contentions that the community of interest between registered nurses and other professionals operating on an interdisciplinary team to care for nursing home and hospice patients mandates a unit of all professional employees. *South Hills Health System*, above; *Marian Manor for the Aged*, above. Rather, noting that like here, a number of professional employees do not provide direct patient care services, are not primary caregivers, are not part of each delivery team and where there is little



overlapping of time spent with patients, the Board has found that a separate unit of registered nurses is appropriate for collective bargaining.<sup>8</sup> Id.

Based on the facts and case law cited above and the record as a whole, I find that a unit limited to registered nurses is appropriate for purposes of collective bargaining.

## **VII. DIRECTION OF ELECTION:**

An election by secret ballot shall be conducted by the Regional Director for Region 4<sup>9</sup> among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated

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<sup>8</sup> I note that neither party here seeks a unit of all professional employees.

<sup>9</sup> Pursuant to Order Transferring Case From Region 4 to Region 22 dated June 30, 2004.

payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **OPIEU Health Care Local 112, AFL-CIO**.

### **VIII. LIST OF VOTERS:**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the voting groups found appropriate above shall be filed by the Employer with the Regional Director in Region 4, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 4, 615 Chestnut Street, 7<sup>th</sup> Floor, Philadelphia, Pennsylvania 19106-4404, on or before **August 6, 2004**. No extension of time to file this list shall be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

**IX. RIGHT TO REQUEST REVIEW:**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **August 13, 2004.**

Signed at Newark, New Jersey this 30<sup>th</sup> day of July 2004.

/s/ Gary T. Kendellen

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